

Remarks

Thorough examination by the Examiner is noted and appreciated.

The claims have been amended to overcome Examiners objection and new claims added to more clearly claim Applicants invention. Support for the newly drafted claims is found in the original claims and/or the Specification. No new matter has been added.

Claim Objections

Claims 1 and 9 have been amended to overcome Examiners objection.

Claim Rejections under 35 USC 103(a)

1. Claims 1-5, and 9-13 stand rejected under 35 USC 103(a) as being unpatentable over Chou et al. (US 6,240,400) in view of Johnson et al. (US 6,047,274).

As noted in the Applicants discussion of the prior art Background of the Invention, Chou et al. disclose a method for setting up an **open market** for **negotiating the purchase and sale** of excess capacity in a semiconductor manufacturing capacity market (see Abstract; e.g., col 1, lines 39-44; col 2, lines 4-12). In the method and system of Chou et al., an **open market**

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system is set up to allow the **buying and selling** (trading) of manufacturing capacity, a market similar to a commodity or equity market. Critical to the open market system of Chou et al. is a neutral 3d party performing a broker function between buyers and sellers (col 1, lines 65- col 2, line 3).

Nowhere do Chou et al. suggest or disclose an auction market such as applicants disclose and claim including:

"auctioning, while employing a computer based auction method, the first capacity for producing the at least one specified product to a pool of bidders comprising at least one bidder;

determining from the pool of bidders at least one winning bidder; and fabricating, for the at least one winning bidder, a quantity of the at least one specified product from the manufacturing facility while employing the first capacity for producing the at least one specified product."

Rather, the **open market system** of Chou et al. works by a different principal of operation than the **auction system** disclosed and claimed by Applicants. In the open market system of Chou et al. **multiple asking prices from multiple sellers** (who may or may not have a fabrication capacity) is communicated to multiple buyers (through a neutral 3d party (broker), the buyers then bid in relation to the multiple asking prices in competition with other buyers, and the asking prices are adjusted in response

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to bids (i.e., an open market). Successful buyers may then resell their manufacturing capacity on the open market.

In contrast, Applicants disclose and claim an **auction system** where a pool (multiple) of bidders bid, according to a computer system, on **a production capacity of a fabrication facility** (seller), resulting in at least one winning **bidder**. Applicants do not disclose or claim an open market system (including a system for adjusting an asking price in response to bids as in an **open market**) or provide for a neutral 3d party (broker) between buyers and sellers in an **open market system**.

On the other hand, Johnson et al. disclose an **auction service between energy suppliers**. In the auction method of Johnson, multiple competing suppliers (providers) supply bids (offers to supply energy at a given rate to a particular end user) to a bidding moderator. The **bidding moderator** then transmits **competing bids** from other competing providers to each of the suppliers, who in turn may adjust their own bids up or down in relation to various information available such as competing supplier bids, consideration of the end user, and consideration of excess capacity of the supplier (see Abstract; col 6, lines 20 - 36). The **bidding moderator** then selects from among the supplier bids (col 6, lines 65 - col 7, line 2) with

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respect to the end user. Thus, in the system of Johnson et al., **multiple energy suppliers** with excess capacity compete in a **supply auction system** through a **bidding moderator** to supply energy to end users (see e.g., col 7, lines 43-51).

Thus, even assuming *arguendo* that Johnson et al. is analogous art, there appears to be no apparent motivation to combine the teachings of the **supplier auction system** of Johnson et al. with the **open market system** of Chou et al. The **supplier auction system** of Johnson et al. and the **open market system** of Chou et al., each work by a different principal of operation. Moreover, any attempt to modify the teachings of either Chou et al. or Johnson et al. to achieve Applicants **auction among buyers** of excess manufacturing capacity would destroy the principal of operation of either method and render both the methods of Chou et al. and Johnson et al. unsuitable for their intended purpose.

Furthermore, even assuming *arguendo*, a proper motivation for combining of the teachings of Chou et al. and Johnson et al., such combination does not produce Applicants disclosed and claimed invention. For example, there is no suggestion or teaching in either Chou et al. or Johnson et al., singly, or in

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combination, of a system where a production capacity of a fabrication facility is auctioned to a pool of buyers, as Applicants have disclosed and claimed.

"If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

"If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious." *In re Ratti*, 270 F.2d 810, 123, USPQ 349 (CCPA 1959).

"A prior art reference must be considered in its entirety, i.e., as a whole including portions that would lead away from the claimed invention." *W.L. Gore & Associates, Inc., Garlock, Inc.*, 721 F.2d, 1540, 220 USPQ 303 (Fed Cir. 1983), cert denied, 469 U.S. 851 (1984).

2. Claims 6-8 and 14-16 stand rejected under 35 USC 103(a) as being unpatentable over Chou et al. (US 6,240,400) in view of Johnson et al. (US 6,047,274), as applied above, and further in view of Ausubel (US 5,905,975).

Applicants reiterate their comments with respect to Chou et al. and Johnson et al. above.

Assuming *arguendo*, that Ausubel is analogous art, and assuming *arguendo* a proper motivation to combine the teaching of Ausubel with either or both Chou et al. and Johnson et al., The fact that Ausubel discloses various types of auctions that Applicants disclose are known in the art, does not help Examiner in establishing a *prima facie* case of obviousness. There is no suggestion or teaching in Ausubel that such auctions should or could be used in the manner claimed and disclosed by Applicants.

"The fact that references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references." *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993).

Since the cited references, alone or in combination, are insufficient to make out a *prima facie* case of obviousness with respect to Applicants independent claims, neither has a *prima facie* case been made out with respect to Applicants dependent claims.

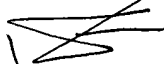
The claims have been amended as suggested by Examiner to overcome grammatical errors and new claims added to clarify Applicants' disclosed and claimed invention. A favorable reconsideration of Applicants' claims is respectfully requested.

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Based on the foregoing, Applicants respectfully submit that the Claims are now in condition for allowance. Such favorable action by the Examiner at an early date is respectfully solicited.

In the event that the present invention as claimed is not in condition for allowance for any reason, the Examiner is respectfully invited to call the Applicants' representative at his Bloomfield Hills, Michigan office at (248) 540-4040 such that necessary action may be taken to place the application in a condition for allowance.

Respectfully submitted,  
Tung & Associates



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